Supreme Court, U.S.
FILED
MAY 12 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1743

In The
Supreme Court Of The United States

OCTOBER TERM, 1988

C. ROBERT SATTI and LESTER J. FORST,
Petitioners,

v.

FRANCELLE DORMAN,
Respondent.

BRIEF IN OPPOSITION TO A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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68 Connecticut Boulevard
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528-4564

QUESTIONS PRESENTED

1. Should the Petition be denied where the Second Circuit fully considered and correctly decided the issues in this case, in accordance with prior rulings of this Court?
2. Are the issues raised here case-specific and not important enough to warrant this Court's review?
3. Did the Second Circuit properly refuse to certify to the Connecticut Supreme Court questions of state law pertaining to the Hunter Harassment Act?

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The respondent, Francelle Dorman, opposes the Petition for a Writ of Certiorari to review the judgment and opinion of the United States Court of Appeals for the Second Circuit entered in the above-entitled proceeding on December 7, 1988, for the reasons set forth herein.

REASONS FOR DENYING THE WRIT

1. BECAUSE THE SECOND CIRCUIT FULLY CONSIDERED AND CORRECTLY DECIDED THE ISSUES IN THIS CASE, IN ACCORDANCE WITH PRIOR RULINGS OF THIS COURT, THE PETITION SHOULD BE DENIED.

Defendants' Petition suggests that the Second Circuit opinion in this case conflicts with prior decisions of this Court, as well as the decision of the Connecticut Supreme Court. (Petition at 6-7, 7, n.1.) All of these cases were properly analyzed by the Second Circuit in its opinion, and the same arguments raised by Defendants here were rejected.

In reviewing prior decisions of this Court, the Second Circuit recognized that statutes may regulate expressive conduct without violating the First Amendment, regardless of whether those statutes are "content-based" or "content-neutral". (Opinion Below, Appendix to Petition (hereinafter "App.") at 11A, quoting Perry Education Ass'n. v. Perry Local Education Ass'n., 460 U.S. 37, 45 (1983). In this case, the Second Circuit analyzed the Hunter Harassment Act, considering both its legislative history and its language, and

found that it could not stand constitutional muster as either a "content-based" or "content-neutral" statute. The court properly reasoned that if the Act were considered "content-based", "[t]here is no showing that protecting hunters from harassment constitutes a compelling state interest ... nor is the statute narrowly drawn to serve any putative compelling state interest." (App. 11A-12A, citing Boos v. Barry, ___ U.S. ___, 108 S.Ct. 1157, 1164 (1988); Houston v. Hill, 481 U.S. ___, 107 S.Ct. 2502, 2512 (1987)). In reviewing the statute as "content-neutral", the court considered the language used in the Act, specifically the terms "interfere", "harass", and "acts in preparation", and found that these "cannot be justified as reasonable time, place or manner regulations of speech", and, therefore, that "the Hunter Harassment Act is not the type of properly tailored statute ... that can be interpreted narrowly to avoid constitutional infirmity." (App. at 12A-13A, citing Frisby v. Schultz, ___ U.S. ___, 108 S.Ct. 2495, 2500-01 (1988); Houston v. Hill, supra, 107 S.Ct. at 2511.)

With respect to controlling Connecticut law, the Second Circuit expressly addressed the Connecticut Supreme Court decision in

State v. Williams, 205 Conn. 456, 534 A.2d 230 (1987) cited in Defendants' Petition. (Petition at p.7, n.1.) As recognized by the Second Circuit, the Connecticut Supreme Court, in State v. Williams, considered vagueness and overbreadth challenges to a statute prohibiting interference with a police officer, Conn. Gen. Stat. Section 53a-167a. That statute punishes anyone who "interferes, obstructs, resists, hinders or endangers" a police officer "in the performance of his duties." Conn. Gen. Stat. Sec. 53-167a. In Williams, the Connecticut Supreme Court held that the statute was not unconstitutionally overbroad or vague because the Act defines the term "interferes" and limits its reach to conduct "intended to obstruct the police in the performance of their duties." 205 Conn. at 471, 534 A.2d at 238. (See Opinion Below, Appendix at 7A.)

2. **THE ISSUES RAISED HERE ARE CASE-SPECIFIC AND ARE NOT IMPORTANT ENOUGH TO WARRANT THIS COURT'S REVIEW**

A decision as to whether a given statute is unconstitutionally vague or overbroad necessarily requires an analysis of the challenged act, including both a review of its legislative history and the specific

language it uses. See generally, Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489 (1982); Houston v. Hill, 481 U.S. ___, 107 S.Ct. 2502 (1987). In this case, the Second Circuit opinion set forth the correct legal principles to be used in determining the constitutionality of a statute. Even assuming arguendo that this Court were to disagree with the fine points of the Court's analysis or the result in this case, such disagreement would not warrant the granting of this Petition.

In this case, the Connecticut Legislature has proposed repeal of the Hunter Harassment Act at issue here, in response to the Second Circuit opinion declaring it unconstitutional. (See Appendix of the Respondent at 1A.) At present, this proposed legislation has been favorably reported upon by the Judiciary Committee and the Environment Committee, and will likely be voted on during this legislative session. Actual passage of

this new Act would render the issues raised here moot. The possibility of its passage, and the Legislature's apparent willingness to rewrite the statue, makes review here less important.

3. THE SECOND CIRCUIT PROPERLY REFUSED TO CERTIFY TO THE CONNECTICUT SUPREME COURT QUESTIONS OF STATE LAW PERTAINING TO THE HUNTER HARASSMENT ACT.

Under a long line of decisions of this Court, the test for determining the appropriateness of employing the certification procedure is whether the statute in question is "readily susceptible" to the proffered narrowing construction that would render an otherwise unconstitutional statute constitutional. Virginia v. American Booksellers Association, ___ U.S. ___, 108 S.Ct. 636, 645 (1988); Belotti v. Baird, 428 U.S. 132, 148 (1976); Erzonik v. City of Jacksonville, 422 U.S. 205, 216 (1975); Broadrick v. Oklahoma, 413 U.S. 601, 613 (1973). (See Opinion Below, App. 7A.) Nothing in the American

Booksellers decision changes this test, as Defendants suggest. Rather, American Booksellers presented a unique situation, in which the parties offered two conflicting, plausible interpretations of the key terms in an ambiguous statute which the state court would be in a position to decide upon and resolve. See American Booksellers, supra, 108 S.Ct. at 644. No such circumstances exist here. Rather, the statute in this case is more like that at issue in Houston v. Hill, in that fashioning a narrowing interpretation of the Act would be tantamount to asking the Connecticut court to rewrite the statute. Houston v. Hill, supra, 107 S.Ct. at 2515.

The Connecticut Supreme Court has refused to rewrite statutes where language used is not susceptible to possible narrowing construction. French v. Amalgamated Local Union 376, 203 Conn. 624, 639, 526 A.2d 861, 868 (1987). Insofar as the dissenting

opinion below suggests that the Connecticut Supreme Court could, on its own, supply limiting language not contained in the statute, this suggestion must be rejected as contrary to well-settled Connecticut law. See, e.g., Greg v. Somers, 178 Conn. 207, 423 A.2d 873, 874 (1979) ("it is a fundamental rule, that, if its language permits, a statute will be construed so as to render it constitutionally valid." (emphasis added).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted:

FRANCELLE DORMAN,
Respondent

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APPENDIX TO
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PROPOSED LEGISLATION, REPEALING
THE HUNTER HARASSMENT ACT, CONN.
GEN. STAT. SECTION 53a-183a..... 1A

File No. 381

Substitue Senate Bill No. 245

STATE OF CONNECTICUT

SENATE

Senate, April 14, 1989. The Committee on Judiciary reported through SEN. AVALLONE, 11th DIST., Chairman of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING HARASSMENT OF HUNTERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (a) No person shall obstruct or interfere with the lawful taking of wildlife by another person at the location where that activity is taking place with intent to prevent such taking.

(b) A person violates this section when he intentionally or knowingly:

(1) Drives or disturbs wildlife for the purpose of disrupting lawful taking where another person is engaged in the process of lawfully taking wildlife;

(2) Blocks, impedes or otherwise harasses another person who is engaged in the process of lawfully taking wildlife;

(3) Uses natural or artificial visual, aural, olfactory of physical stimulus to affect wildlife behavior in order to hinder or prevent the lawful taking of wildlife;

(4) Erects barriers with the intent to deny ingress or egress to areas where the lawful taking of wildlife may occur;

(5) Intentionally interjects himself into the line of fire;

(6) Affects the condition or placement of personal or public property intended for use in the lawful taking of wildlife in order to impair its usefulness or prevent its use; or

(7) Enters or remains upon private lands without the permission of the owner or his agent, with intent to violate this section.

(c) Any person who violates any provision of this section shall have committed a class C misdemeanor.

(d) Any person convicted of a violation of this section who holds a license to take wildlife issued pursuant to part III of chapter 490 of the general statutes shall have such license revoked.

Sec. 2. (NEW) A law enforcement officer may order any person to desist from conduct in violation of section 1 of this act if the officer observes such conduct. Any person who fails to obey such order shall be guilty a class B misdemeanor.

Sec. 3. (NEW) The superior court may enjoin conduct which would be in violation of section 1

of this act upon petition by an aggrieved person or a person who reasonably may be aggrieved by such conduct, upon a showing that such conduct is threatened or that it has occurred on a particular premises in the past and that it is not unreasonable to expect that under similar circumstances it will be repeated.

Sec. 4. (NEW) Conservation officers, special conservation officers and patrolmen appointed by the commissioner of environmental protection under the authority of section 26-5 of the general statutes shall have the authority to enforce the provisions of this act.

Sec. 5. Section 53a-183a of the general statutes is repealed.

Committee Vote: 20 Nay 1

BACKGROUND

Court Case

In Francelle Dorman v. C. Robert Satti and Lester J. Forst, the U.S. District Court found Connecticut's harassment of hunters, trappers and fishermen law unconstitutionally vague and overbroad (Feb. 1, 1988, Civil No. H-86-989). This decision was upheld by the Second Circuit Court of Appeals (Dec. 7, 1988, Docket No. 88-7390). The statute (C.G.S Sec. 53a-183a, PA 85-351) made it a class C misdemeanor to intentionally try to stop another person from lawfully taking or preparing to take wildlife, or to harass such a person.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 20 Nay 1